

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

06

No. 7:06-cr-56-1BO

PATRICK FERGUSON,

Petitioner,

v.

UNITED STATES OF AMERICA

Defendant.

ORDER

This matter is before the Court on Petitioner's "Motion to Compel Government to File a Fed. R. Crim. P. Rule 35(b)/Specific Performance of Plea Agreement" and Respondent's Motion to Dismiss. Petitioner's Motion is DISMISSED for failure to state a claim under Rule 12 (b)(6) and the Respondent's Motion is GRANTED.

FACTS

Petitioner was one of the Robeson County deputy sheriffs convicted for their involvement in the "Tarnished Badge Scheme." On June 26, 2006, Petitioner entered a plea of guilty, pursuant to a written plea agreement, to one count of conspiracy to kidnap in violation of 18 U.S.C. § 1201(c) and one count of use and carrying a firearm during a crime of violence in violation of 18 U.S.C. § 924(c)(1).

On October 15, 2007, the United States filed a Motion for Downward Departure pursuant to U.S.S.G. § 5k1.1 and 18 U.S.C. § 3553(e). On October 16, 2007, the Court granted the United States' Motion and sentenced Petitioner to 250 months of imprisonment.

On August 25, 2010, Petitioner filed the instant motion seeking a “66% to 70% reduction” of his sentence. He argues that the Respondent breached the plea agreement by failing to advise the court of the full extent of Petitioner’s cooperation and for failing to move for downward departure.

DISCUSSION

The Petitioner has failed to state a claim upon which relief can be granted.

Petitioner’s Plea Agreement specifically states that the United States “will make known to the Court at sentencing the full extent of Defendant’s cooperation, but the United States is not promising to move for departure pursuant to U.S.S.G. § 5k1.1, 18 U.S.C. § 3553(e), or Rule 35(b) of the Federal Rules of Criminal Procedure.” (D.E. # 6). Nevertheless, Respondent did in fact move for departure prior to Petitioner receiving his sentence, and this Court granted that motion. This Court then exercised its discretion in sentencing Petitioner. The Petitioner has not alleged any facts showing the Respondent failed to inform the Court of the full extent of his cooperation.

Petitioner has failed to state a claim, and Petitioner’s Motion is denied.

CONCLUSION

Petitioner’s Motion is DISMISSED for failure to state a claim under Rule 12 (b)(6) and the Respondent’s Motion is GRANTED.

SO ORDERED, this 26 day of January, 2011.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE